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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/606,314	06/29/2000	Richard Fike	IVGN 174.1 DIV	1340
65482	7590	07/13/2007		
INVITROGEN CORPORATION C/O INTELLEVATE P.O. BOX 52050 MINNEAPOLIS, MN 55402			EXAMINER FLOOD, MICHELE C	
			ART UNIT 1655	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/606,314

Applicant(s)

FIKE ET AL.

Examiner

Michele Flood

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27,36,92-95 and 110-121 is/are pending in the application.
- 4a) Of the above claim(s) 110 and 112-121 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27,36,92-95 and 111 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/8/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the elected species: water as the solvent, animal cell as the cell, and proliferation of a eukaryotic cell *in vitro* in the replies filed on December 20, 2006 and April 19, 2007 is acknowledged.

The claims have been examined, insofar, as they read on the elected invention.

Claims 27, 36, 92-95 and 111 are under examination.

Response to Arguments

Claim Rejections - 35 USC § 102

Claims 27, 36, 92-95 and 111 are rejected under 35 U.S.C. 102(b) as being anticipated by Pebbles (A*) and Getler et al. (AB4), as evidenced by the teachings of Fassolitis et al. (U). Each of Applicant's arguments has been fully considered. However, the rejection remains for the reasons set forth in the previous Office action and for the reasons set forth below.

Applicant claims an agglomerated eukaryotic cell culture medium powder prepared by agglomerating a dry powder eukaryotic cell culture medium with a solvent; wherein said agglomerated powder, upon being reconstituted with water, comprises all the necessary nutritive factors for proliferation or cultivation of a eukaryotic cell *in vitro*. Applicant further claims the agglomerated eukaryotic cell culture medium powder of claim 27, wherein said eukaryotic cell culture medium has a pH of between 7.1-7.5 when said medium is reconstituted with a solvent, wherein said solvent is water or

serum. Applicant further claims the medium powder of claim 27, wherein said medium powder exhibits reduced dusting in comparison to a medium powder that is non-agglomerated; wherein said medium powder exhibits more rapid dissolution in comparison to a medium powder that is non-agglomerated; wherein said medium powder exhibits reduced dusting and more rapid dissolution in comparison to a medium powder that is non-agglomerated. Applicant further claims the medium powder of any one of claims 92-94, wherein the non-agglomerated medium powder is a lyophilized or ball-milled powder. Applicant further claims the agglomerated eukaryotic cell culture medium powder of claim 27, wherein said solvent is water, serum, aqueous acid or base. Applicant further claims the agglomerated eukaryotic cell culture medium powder of claim 27, wherein said eukaryotic cell is an animal cell.

Peebles teaches a method of obtaining a dried milk powder, which comprises lactose and milk protein, by agglomerating a spray-dried powder with water vapor and droplets of moisture. See Column 2, lines 13-70. The particulate matter of the dried milk powder taught by Peebles is of a size substantially greater than the particle size of the original powder, is readily dispersible in water, and has reduced dusting. See claims and Column 9, lines 46-54.

Getler teaches agglomerated milk products and milk-like products which are made in a two-stage agglomeration process comprising spray drying a pre-agglomerated concentrated premix by return of fine particles to an atomizer and, in a subsequent step, post-agglomeration by wetting and drying in a fluidized bed. The agglomerated dried products taught by Getler comprise the following ingredients: whey protein

concentrates (see page 1, lines 11-14); and a fat component mixed with water, vitamins, and with raw materials in powder form, *i.e.*, casein, whey, skim milk, malto dextrine, *etc.* See page 1, line 36 to page 7, line 2. In Example 3, Getler teaches an agglomerated powder that exhibits reduced dusting and rapid dissolution.

With regard to the claim limitation "wherein said agglomerated powder upon being reconstituted with water supports the proliferation or cultivation of a eukaryotic cell *in vitro*" of Claim 27, as evidenced by the teachings Fassolitis the prior art agglomerated dry powders taught by Peebles and Getler are deemed agglomerated eukaryotic cell culture medium powders that are able to support the proliferation or cultivation of a eukaryotic cell *in vitro* upon reconstituted with water and inherently have the claim-designated pH range. For example, Fassolitis teaches a method for the cultivation and/or growth of eukaryotic cells, *i.e.*, epithelial cells or "animal cells" using a powdered nonfat dry skim milk filtrate (NDMF) as an eukaryotic cell culture medium. See page 201, Column 1, under "Preparation of milk fraction", wherein Fassolitis teaches a method of making NDMF comprising reconstituting a dry milk powder. On page 200, Column 2, under "Cell culture medium", Fassolitis teaches a cell culture medium supplemented with 5% NDMF, and adjusted to a pH of 6.8 to 7.4 that is used to propagate epithelial cells (see Table 1 on page 201).

The references anticipate the claimed subject matter.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MICHELE FLOOD
PRIMARY EXAMINER

Michele Flood
Primary Examiner
Art Unit 1655

MCF
July 9, 2007